



IN THE MATTER OF)
)
Charles A. Hightower,)
Complainant)
)
and)
)
)
Vita Foods,)
Respondent)

CHARGE NO.: 2000 CF 0886
EEOC NO.:
ALS NO.: 11418

This matter comes before the Commission on Respondent's Motion to Dismiss for Lack of Subject Matter Jurisdiction or, in the Alternative, to Extend Answer Due Date and Date of Public Hearing ("Motion"), filed on December 19, 2000. Complainant, who is proceeding *pro se*, filed a response on February 14, 2001 and Respondent's reply was filed on February 27, 2001. The matter is now ready for decision.

Complainant filed his perfected charge in this case on October 28, 1999 with the Department of Human Rights (“Department”). On October 10, 2000, 348 days after the charge was filed, the Department issued its Notice of Dismissal for Lack of Substantial Evidence (“Notice”). On its face, the Notice indicated that the last date for filing a request for review with the Department’s Chief Legal Counsel was November 14, 2000. Then, on November 13, 2000, Complainant filed the complaint in this case directly with the Commission. There is no indication in the record now before the Commission that a request for review was ever filed or

that a reversal of the Notice was entered. In lieu of an answer to the complaint, Respondent filed the instant Motion.

Discussion

In the Motion, Respondent asserts that the Commission does not have jurisdiction over the subject matter of this complaint because it was not filed with the Commission in accord with the provisions of the Human Rights Act that govern the timeliness of complaints. Under Section 7A-102(G)(2), a complainant can file a complaint directly with the Commission during the “window” between 365 and 395 days after the charge is filed,” but only “if the Director has not sooner issued a report and determination” finding that a complaint should be filed or that there is not substantial evidence to support such a complaint. 775 ILCS 5/7A-102(G)(2). Thus, while the Complainant here filed his own complaint with the Commission some 381 days after filing the charge with the Department, ostensibly within the 30-day “window,” he did so after the Notice was issued. This takes his action outside of the “window” provided in Section 7A-102(G)(2).

It is well settled that the time periods specified for filing charges and complaints under the Human Rights Act are jurisdictional, and are therefore not subject to equitable doctrines such as waiver, tolling and equitable estoppel (the few instances where this approach has been relaxed do not apply in this matter). Pickering v. Human Rights Commission, 146 Ill.App.3d 340, 496 N.E.2d 746, 99 Ill.Dec. 885 (2nd Dist. 1986). In this case, the terms of the statute are unambiguous in their application to the timeline presented above. The Department completed its investigation and issued its Notice before the expiration of 365 days after the filing of the charge. Once the Notice was served on the parties and no request for review was timely filed, the

viability of this complaint ended. It was not subject to resuscitation through filing a complaint directly with the Commission during the 30-day “window” provided in the statute.

Accordingly, I recommend that the complaint be dismissed with prejudice because it was not filed in a manner that would confer subject matter jurisdiction upon the Commission.

Recommendation

It is recommended that Respondent’s Motion be granted and the complaint be dismissed with prejudice.

HUMAN RIGHTS COMMISSION

ENTERED:

March 9, 2001

BY: _____

DAVID J. BRENT
ADMINISTRATIVE LAW JUDGE
ADMINISTRATIVE LAW SECTION